Carpenters Union Local No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO *and* Robert Wood & Associates, Inc. Cases 32-CC-473 and 32-CC-484

July 23, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On October 26, 1981, Administrative Law Judge Burton Litvak issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed limited cross-exceptions to the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein.

Contrary to the Administrative Law Judge, the General Counsel and the Charging Party contend, and we find, that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing at the Charging Party's neutral gate during the week of April 13-17 and on May 21, 1981. The Administrative Law Judge found that Respondent's conduct was not unlawful because employees of neutral subcontractors McLean Steel on April 13-17 and Jerry R. Clark Construction, on May 21, did not report for work and there was no record evidence that any other subcontractors were on the project during those times. Finding no evidence of the subcontractors and their employees' motivation for failing to report to the job as scheduled, except for the "self-serving" hearsay testimony of Project Manager Radom, the Administrative Law Judge conclude that Respondent's picketing on those dates was not violative of the Act, citing *Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company)*, 248 NLRB 802 (1980).

We find the Administrative Law Judge's application of *Gulf Coast* to be misplaced. Unlike the situation in that case, where no common situs had been established when the picketing commenced, and the general contractor's hearsay testimony related to the responses to his efforts to get the subcontractors to begin work, the record in this case clearly demonstrates that a common situs was already in existence on the dates in question. Furthermore, both McLean Steel and Jerry R. Clarke had begun work and were scheduled to continue work on those days. Thus, we conclude that Respondent's picketing of the neutral gate at a time when a common situs had been established and subcontractors were scheduled to work supports an inference that the later failure of the two subcontractors to appear and continue their work was due to Respondent's picketing at the neutral gate.

AMENDED CONCLUSIONS OF LAW

Insert the following as paragraph 3:

"3. By picketing at the alleyway entrance onto the Laurel Grove Medical Plaza jobsite, which entrance area was solely utilized by neutral subcontractors on April 1, 2, 6 through 10, and 13 through 17, and May 18 and 21, with an object of forcing or requiring the subcontractors to cease doing business with Robert Wood, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act, which violations are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Carpenters Union Local No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Haywood, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

MEMBER JENKINS, dissenting:

For the reasons stated in my dissents in and since *Markwell and Hartz*,[2] I find that Respondent's pick-

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The General Counsel filed a motion to consolidate this case with *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union No. 1622 (Specialty Building Company)*, 262 NLRB 1244, issued today, which involves similar violations by the same Respondent. The General Counsel argued that Respondent's conduct in this case, viewed together with the violations found in *Specialty*, requires the issuance of a broad remedial order. However, we find it unnecessary to consolidate the two cases, as Respondent's actions in each case independently warrant the issuance of broad remedial orders.

[2] *Building and Construction Trades Counsel of New Orleans, AFL-CIO (Markwell and Hartz, Inc.)*, 155 NLRB 319 (1965). See also *Construction & General Laborers Union, Local 304, Laborers International Union of North America (Athejen Corporation)*, 260 NLRB 1311 (1982), and cases cited herein.

eting here is primary in nature and protected by the proviso to Section 8(b)(4)(B) of the Act. Accordingly, I would dismiss the complaint.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge: This matter[1] was heard before me in Oakland, California, on July 13 and 14 and October 1, 1981.[2] On April 29, May 29, and June 25, respectively, the Regional Director for Region 32 of the National Labor Relations Board, herein called the Board, issued a complaint, a consolidated complaint, and an amended consolidated complaint based upon unfair labor practice charges filed on April 7 and May 20, respectively, by Robert Wood & Associates, Inc., herein called Robert Wood, alleging that Carpenters Union Local No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called Respondent, engaged in acts and conduct violative of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, herein called the Act. Respondent filed answers denying the commission of any unfair labor practices. At the hearing, counsel for the General Counsel was permitted to amend the consolidated complaint, altering the jurisdictional allegations thereof and adding another allegation that Respondent, by its acts and conduct, violated Section 8(b)(4)(i) and (ii)(B) of the Act. Respondent denied both allegations. All parties were afforded full opportunity to offer relevant evidence, to examine and cross-examine witnesses, and to submit post-hearing briefs. All parties filed such briefs, each of which has been carefully considered. Therefore, based upon the entire record, the post-hearing briefs, oral argument, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Robert Wood, a California corporation, with a place of business in City of Industry, California, has been engaged in the building and construction industry as a general contractor and, since approximately August 1980, has been the general contractor for the construction of a three-story building, called the Laurel Grove Medical Plaza, located on Lake Chabot Road in Castro Valley, California. In its capacity as general contractor, Robert Wood entered into contracts with various subcontractors, including U.S. Glass & Mirror (installation of glass and aluminum fronts and glazing work), McLean Steel (steel framing and decking), and Comfort Masters (heating, air-conditioning, and duct work), to perform certain work on the construction project. While it does not appear that Robert Wood itself satisfies any of the Board's jurisdictional standards, in cases involving secondary activity by a labor organization which may be violative of Section 8(b)(4) of the Act "the Board will take into consideration for jurisdictional purposes the entire operations of the secondary employers at the locations affected by the alleged conduct involved." *International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 257 (Glenn L. Whitman and Robert R. Jolley, d/b/a Osage Neon Plastics)*, 176 NLRB 424, 425 (1968); *Highway Truck Drivers and Helpers, Local 107, a/w the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (George F. Paravicini, individually and trading as D.L.W. Transportation Company)*, 145 NLRB 212 (1968). In this regard, the record discloses that, in connection with their respective contracts with Robert Wood and their operations at the Laurel Grove Medical Plaza building project, U.S. Glass & Mirror purchased fixed windows, in the amount of $15,909, directly from a supplier located in the State of Oregon; McLean Steel purchased steel trusses and steel joists, valued at $32,178.27, directly from a supplier located in the State of Nebraska; and Comfort Masters purchased a Carrier multi-zone air-conditioning unit and accessory items, valued at approximately $20,000, from a wholesale distributor of Carrier air-conditioning products located within California, which company, in turn, purchased said products directly from Carrier, which is located in the State of Tennessee. The record further discloses that all the aforementioned materials were shipped directly to the Laurel Grove Medical Plaza jobsite from outside the State of California. Based upon the foregoing, inasmuch as said purchases of goods and products exceed $50,000, and the record as a whole, I find that Robert Wood, McLean Steel, U.S. Glass & Mirror, and Comfort Masters are employers and/or persons engaged in commerce or in industries affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.

II. LABOR ORGANIZATION

The consolidated complaint alleges, Respondent admits, and I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUE

Did Respondent, by its picketing at the Laurel Grove Medical Plaza jobsite on April 1 and 2, April 6 through April 23, May 18, May 20 and 21, and July 22, engage in acts and conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act?

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Robert Wood is engaged in the building and construction industry as a general contractor, constructing commercial buildings for developers and/or architects. As to the project herein involved, Robert Wood contracted with Laurel Grove Medical Partners, Ltd., to erect a three-story medical office building, called the Laurel

[1] The instant matter was consolidated for hearing with Case 32-CC-476, which involved a different Respondent but similar facts. After the hearing opened, I approved an informal settlement agreement in the latter case, and it was subsequently severed from these proceedings.

[2] The record was reopened on October 1, pursuant to an order of the Board dated September 16, 1981, in order to take additional evidence of potential unfair labor practices.

All dates herein are in 1981 unless otherwise stated.

Grove Medical Plaza, on Lake Chabot Road in Castro Valley, California. Construction work on the building was scheduled to, and did, commence in August 1980, with all such work performed by subcontractors. These included Avery Pratt Masonry (masonry work), Juranco Plumbing (sewers), McLean Steel (steel decking), Comfort Masters (heating and air-conditioning), U.S. Glass & Mirror (glazing work and windows), Ragevig Roofing (roofing work), Jerry R. Clarke Construction (concrete), Enserv Electric (electrical work), Chatterton Plumbing (plumbing work), and U.S. Elevator and Supply (elevators). Roger Radom, who has been project manager[3] since the inception of the project, testified that Robert Wood reserved for itself all "miscellaneous work," consisting of light carpentry and cleanup duties. To perform this latter work, the general contractor employed three carpenters and a helper, the latter acting as Radom's assistant. According to Radom, the carpentry work which was accomplished by Robert Wood's employees was completed by mid-March.[4]

The record establishes that the jobsite is fully enclosed, with retaining walls bordering the entire lengths of the west and north sides. The south side of the project is bordered by Laurel Grove Hospital; between the hospital and the building project is an unpaved alley or roadway which is approximately 20 feet wide. Lake Chabot Road runs in front of and along the entire east side of the project. A sidewalk[5] separates the jobsite from the street on the latter side. Further, the building itself is set back 12 to 15 feet from the sidewalk, and a chain link fence[6] separates the project from the sidewalk and stretches along the entire front of the jobsite. With regard to the fence, from its erection until May 21, two swinging gates existed within the fence structure. One such gate is located 10 feet from the north end and crosses the only true entrance onto the project. According to Roger Radom, this gate remains open during each workday but is padlocked shut each evening. The second swinging gate, consisting of two hinged fence sections both of which are capable of swinging inward or outward, was placed[7] approximately 5 feet to the north of the alley or roadway between the hospital and the building project. The record establishes that, except for March 9, this gate had constantly been padlocked; that the building itself was directly behind this gate; and that, at all times material herein, the Carrier air-conditioning unit, which will be installed in the building, has been placed no more than 2 or 3 feet in back of the hinged fence section which is farthest from the alleyway, effectively blocking said section from swinging inward. Finally, also at all times material herein until May 21, affixed to a fence post at the corner of the hospital and to another at the end of the permanent fence and strung across the entire width of the alleyway at the southern end of the Lake Chabot Road side of the jobsite was a loose strip of fencing which was capable of being removed, rolled back, and placed to either side of said alley.

As mentioned above, construction work on the building project was predominantly to be performed by subcontractors who were scheduled to work at appropriate intervals. Apparently, in the latter part of February, employees of Avery Pratt Masonry were either scheduled for work or actually working at the jobsite. According to both Project Manager Radom and his assistant, Frank O'Dea, one day in mid-February a man entered onto the jobsite; walked over to Radom, who was standing upon a section of scaffolding; and identified himself as John Wedaman, an organizer for Respondent. Radom thereupon climbed down, and he and Wedaman entered Robert Wood's job shack.[8] According to Radom, "he expressed . . . that he noticed that I had carpenters on the job, and he asked me if they were Union carpenters . . . and I told him, no, I didn't believe any of them were in the Union. He then asked me if I had other contractors on the job, and I said, 'Well, yeah, at the time I have a mason on the job.'" Wedaman asked if the subcontractors were union contractors, "and I just informed him that I really didn't want to give him any names of contractors, and that [it] didn't make a difference whether they were Union or non-Union. . . ." Nothing more was said, and Wedaman departed.

On or about February 24, two individuals, carrying picket signs, established themselves at the north entrance to the jobsite, off Lake Chabot Road. A witness, Michael Britton, testified that he is a member of Respondent and that, after volunteering to do so, he picketed at the jobsite on behalf of Respondent for at least a 2-1/2-month period.[9] The record discloses that he carried a sign reading:

> Robert Wood & Associates, Inc. fails to pay wage rates and fringe benefits established by carpenters in area. No dispute with any other employer.

The other picket carried a similarly worded placard, identifying an identical dispute between Avery Pratt Masonry and the bricklayers union. The record further discloses that, in response to this picketing, Project Manager Radom established what he believed were clearly defined separate entrances to the jobsite from Lake Chabot Road by means of two signs. The first was placed at the left corner of the north entrance and read:

[3] According to Radom, his functions as project manager included supervising all phases of the construction work, writing and negotiating all subcontracts, and scheduling the performance of work on the jobsite.

[4] The record does disclose that after March Robert Wood continued to employ personnel on the project—using carpenter's tools and performing odd-type jobs.

[5] From Lake Chabot Road, there is no driveway which crosses the sidewalk and leads into the alley between the building project and the hospital.

[6] At the time construction work commenced, no such fencing existed. However, according to Radom, it was hurriedly erected after the building's basement had been excavated, "and I didn't want any kids getting onto the project until I covered the basement area."

[7] As to the location of the gate, Radom intimated that such was a mistake, asserting that, at the time the fence was erected, he hurriedly pointed out the intended location for the gate to the contractor. Radom did not explain why he waited until May 21 to move the swinging gate to its present location—across the alleyway.

[8] The job shack is located between the building and the front fence, equidistant between the north and south ends of the project.

[9] A second individual, Gary Smith, who also is a member of Respondent, commenced picketing with Britton at the jobsite on March 9. He carried an identical sign.

STOP—READ GATE 1
THIS GATE IS RESERVED FOR
PERSONNEL, VISITORS & SUPPLIERS
OF THE CONTRACTORS LISTED BELOW:

ROBERT WOOD & ASSOC. INC.
AVERY PRATT MASONRY INC.

The other sign was affixed to that section of the swinging gate at the south end of the project which was blocked from swinging in toward the building by the Carrier air-conditioning unit, with the sign, therefore, placed approximately 15 to 20 feet from the alleyway between the hospital and the building project.[10] The sign read:

STOP—READ GATE 2

THIS GATE MAY NOT BE USED BY
PERSONNEL, VISITORS, OR SUPPLIERS
OF THE CONTRACTORS LISTED BELOW:

ROBERT WOOD & ASSOC. INC.
AVERY PRATT MASONRY INC.

Also on February 27, Radom sent a telegram to Respondent, notifying the latter that the aforementioned gate signs had been posted and requesting Respondent to confine its picketing to Gate 1, "the primary's gate." No other subcontractors besides Avery Pratt Masonry worked on the project for any significant periods in February and March; however, Respondent's pickets continually ignored the reserve gate system, picketing along the entire front of the jobsite.

A great deal of the record evidence concerns exactly what the Gate 2 sign designated as the entrance for use by all neutral subcontractors, their employees, and their suppliers. In this regard, Project Manager Radom testified that the sign was intended to, and did, designate the alleyway, at the southern end of the project and across which was stretched the removable section of fencing, as the neutral gate; while Respondent argued that the placement of the sign clearly identified the swinging gate, at the south end of the chain link fence, as Gate 2 and that the alleyway represented a separate, unposted third entrance onto the jobsite. Radom, while offering no credible explanation as to why the Gate 2 sign was affixed to the fence at such a distance[11] from the intended entrance and at a point which obviously was a section of a swinging gate and admitting the unknowing neutral visitors or suppliers "may indeed" believe the southern swinging gate was that which was designated as Gate 2, asserted that this area was *not* an entrance inasmuch as, except for March 9, this swinging gate was constantly padlocked and as neutral subcontractors and their suppliers always utilized the alleyway as their entrance onto the project. However, Respondent points to the very events of March 9 to buttress its position that not only was the swinging gate an entrance onto the project but also that its pickets perceived it as such. On that day, according to the credible testimony of Michael Britton and the documentary evidence, the gate was opened in the morning to permit the pickup truck of a drilling subcontractor to be backed onto the project to begin the process of placing building braces into the ground. Respondent's Exhibits 2(a), (b), and (c) clearly show the swinging gate wide open (with the remainder of the fence still standing) and the pickup truck backed onto the jobsite at that location.[12] Other than on this date, Britton corroborated Radom that the swinging gate was constantly padlocked and never utilized by subcontractors and that the latter and their suppliers always utilized the alleyway for access onto the project.[13] In this regard, there is no dispute that either Radom or O'Dea would roll back the loose fencing whenever entry by a subcontractor or supplier was necessary.

While there is controversy over whether the alleyway was *the* neutral entrance or a *third* entrance onto the jobsite, there is no dispute that Respondent's pickets stationed themselves at this location whenever the fencing was moved and the entrance was utilized by subcontractors or their suppliers. Thus, picket Britton testified that he picketed there "anytime that had a call to [do so] . . . . Whenever there was business being occurred at the [alley entrance]." He further testified that he was instructed to picket in that manner by Wedaman. Corroborating Britton, picket Gary Smith testified that he was assigned to picket Gate 1 "and when they tore down the fence I was told to go to the [alleyway entrance] when somebody went down and just hold my sign there and take it down and walk to Gate 1 where the other carpenter was and then we'd switch on intervals." While Respondent's admissions were generalized, the consolidated complaint alleges specific incidents of the aforementioned picketing as unlawful. In support, Radom testified that McLean Steel was scheduled to perform work on the project for 10 days commencing on or about March 31. On that day the subcontractor's employees entered and exited through Gate 1; however, on April 1, after Radom or O'Dea rolled back the loose fencing, McLean Steel employees entered the jobsite via the alleyway. Also on that date, a large steel shipment was delivered to McLean Steel at the alleyway entrance. That day, while the McLean Steel employees worked and during the steel delivery, Respondent's pickets traversed the entire front of the project—from the Gate 1 entrance to, and including, the alleyway. Britton admitted picketing at the alleyway at the time of the McLean Steel steel delivery, testifying that the driver was unable to drive onto the project due to the muddy condition of the alley. Radom

[10] This distance is easily discerned from viewing Resp. Exh. 1(c), a photograph of the scene.

[11] According to Radom, on or about March 9, the sign was moved 5 feet to the left. However, his assistant, Frank O'Dea, contradicted Radom, testifying that prior to May 21, he *never* had any occasion to move the sign. Finally, picket Michael Britton confirmed Radom that the sign had been taken down on March 9 but corroborated O'Dea that the sign was reaffixed in exactly the same position.

[12] At other times during that day, the entire fence was taken down to permit drilling at various points along the front of the building, between it and the sidewalk. It was this that prompted a telegram from Radom to Respondent on March 10, describing the events of March 9 and stating that the reserved gate system had been reestablished on the jobsite.

[13] Britton admitted that a large trailer "couldn't have made it" through the swinging gate and around the corner of the building but contended that smaller vehicles could have been driven through and onto the property at that point.

further testified that McLean Steel employees again utilized the alleyway for entrance onto the project on April 2 and that Respondent's pickets again traversed the entire front of the project,[14] including the alley.[15]

Radom and O'Dea testified that, on April 6 and 7, Respondent's pickets continued to picket both at Gate 1 and at the alleyway and that McLean Steel employees reported to the jobsite but did not cross the picket line at the alleyway and enter onto the project on either date. According to Radom, he telephoned to unidentified McLean Steel officials on April 6 and was told that the latter's personnel would not enter the project due to the picketing. The record discloses that, despite this comment and continued picketing at the alleyway by carpenter pickets for the remainder of that week, the McLean Steel employees did report to work on April 8 and that they worked on April 9 and 10, as well. Also during this week, a forklift was delivered to McLean Steel via the alleyway. Radom testified that Respondent's pickets were stationed at the alleyway when said delivery was made, and Britton recalled picketing on that occasion.

The record further discloses that, although McLean Steel had significant work remaining on the jobsite, no employees of that subcontractor reported for work during the week of April 13. By the start of this week, the bricklayers union picket was no longer appearing in front of the jobsite; however, at some point during this week, a picket, representing the sheetmetal workers union, replaced the former, joining the two carpenter pickets.[16] According to Radom, these three pickets traversed the entire front of the project each day that week, stopping for brief periods in front of the alley. With no work being done, Radom further testified, he telephoned to McLean Steel several times during the week in order to ascertain when, if at all, that contractor would reappear on the jobsite.[17] Testifying that he spoke to Lawrence McLean and to two supervisors, Radom stated that "I was told that they wouldn't be able to get back onto the project until—that the sheetmetal picket was—they resolved the sheetmetal picket problem." Further according to Radom, Lawrence McLean told him that his company would commence work when that picket was gone. Counsel for the General Counsel did not have any witnesses to corroborate the above conversations, which clearly are hearsay in nature.

From late April until on or about May 18, Respondent's pickets confined their activities to Gate 1, the gate reserved for Robert Wood. There is no evidence that Respondent was unsuccessful in advertising its dispute with Robert Wood to the latter's employees or to the general public during this period. Frank O'Dea testified that, on May 18, two employees of a subcontractor, U.S. Elevator and Supply, drove onto the jobsite in a pickup truck via the alleyway and that, immediately thereafter, Respondent's pickets walked down to the alleyway and remained there. The truck was parked next to the building and an individual, whom O'Dea described as the "boss," asked what was happening. O'Dea told him about the picketing, and the "boss" replied that he had been unaware of any such activity. Thereupon, according to O'Dea, the "boss" said he was not going to do any work, and the pickup truck was driven off the jobsite through Gate 1.

The record reveals that later in this week on May 20, Radom had scheduled Jerry R. Clarke Construction to perform concrete work on the jobsite; the latter, in turn, had purchased, and was scheduled to receive on said date, a cement delivery from Rhodes and Jamison Concrete. At approximately 11 a.m., the concrete delivery trucks arrived at the entrance to the alleyway. Standing at the alleyway and blocking the delivery were Respondent's two pickets and approximately eight other individuals, including Wedaman. According to O'Dea, the cement trucks eventually were permitted to drive into the alleyway but only after a picket yelled that ". . . this was a sanctioned line and the drivers shouldn't cross . . . there could be trouble," and other individuals recorded the license numbers of the delivery trucks. General Counsel's Exhibit 21 clearly shows the picketing at the alleyway as the cement delivery truck was stopped at its entrance. According to Radom, the carpenter pickets remained at the alleyway for the remainder of that day and the next day.[18]

On May 21, according to O'Dea, Robert Wood decided to clarify any ambiguity as to the location of Gate 2. Thus, on that day, he and two helpers removed the padlocked swinging gate from its prior position and placed it across the entrance to the alleyway. In so doing, the Gate 2 sign was taken off the fence and placed at the edge of the building, to the right of the alley. After he finished installing the swinging gate, O'Dea again affixed the Gate 2 sign to the gate. He further testified that, while the gate installation work was in progress, the two pickets walked down to where O'Dea was working. "They started saying to us that we had already violated the gate and this job would be shut down pretty soon. I'd be out of work . . . . No other union company would enter the gate."

During the month of July, Jerry R. Clarke Construction employees performed work on the jobsite for 3 or 4

[14] On both days, according to Radom, a picket was "stationed" at the alley, but Radom could not recall if this individual carried a carpenter picket sign or whether he was the bricklayers picket.

[15] Late in the afternoon of April 2, Radom took down the gate signs in order to remove Avery Pratt Masonry from them inasmuch as its work at the jobsite had been concluded. According to Radom, not only were the signs reestablished in the same locations at 9 a.m. on April 3 but also a telegram was sent to Respondent on April 3 so informing the latter. When McLean Steel employees arrived for work on April 3, Respondent's pickets were again traversing the entire front of the jobsite. Such occurred prior to the reestablishment of Steel's employees honored the picket line and did not report for work.

[16] Both Radom and O'Dea testified, without contradiction, that they observed Wedaman in front of the project several times each week during April.

[17] Radom testified that while he generally scheduled work at the jobsite and allotted each subcontractor a certain number of days in which to perform its work, McLean Steel controlled its own labor relations, including the scheduling of work.

[18] According to Radom, Jerry R. Clarke Construction was scheduled for work this day (May 21) but no employees reported to the jobsite. Radom testified that he spoke to Jerry Clarke that day and that the latter allegedly stated that his men were not there because of the picketing and because he feared no concrete delivery would be made. Again, despite the obvious hearsay nature of this conversation, no corroborating testimony was offered.

days. On July 22, according to Jerry Clarke, he had scheduled several cement deliveries from Rhodes and Jamison Concrete. Brian Norton, a driver for the latter, arrived in front of the jobsite at approximately 8 a.m. and observed Clarke and two other individuals standing at the alleyway. Assuming that he was to deliver his concrete shipment through this entrance, Norton commenced maneuvering his truck in order to back into the alleyway. At this point, according to Clarke, a carpenter picket, without his sign, came from Gate 1 and jumped onto the driver's side running board of the moving truck. Norton, who was concentrating on operating his truck, testified that he could sense that someone had leaped onto the running board but that he never turned to see who the individual was. Norton yelled that the person should get off the truck; a voice responded that he could not back onto the jobsite. Norton asked why, and the individual replied that his union was picketing the job and that, as a member of the Teamsters, Norton was required to honor a picket line. Norton then asked which union was picketing, and the voice identified the carpenters union. Nothing more was said,[19] and, according to Norton, whoever was on the truck's running board jumped to the ground. As he continued maneuvering the truck onto the jobsite, Norton observed an unidentified individual walking from the vicinity of his ready-mix delivery truck toward a gray pickup truck which was parked in front of the jobsite, midway between Gate 1 and the alleyway. Subsequently, Norton backed onto the jobsite via the alleyway and commenced the concrete pour. Later, while Norton was in the midst of his pour, a second Rhodes and Jamison Concrete ready-mix truck drove up to the project and was parked at the alleyway entrance. The driver walked over to Norton, who was standing by the cab of his truck at the front edge of the building project, and they began to converse. The aforementioned gray pickup truck, which had been driven away from the jobsite, returned, followed by a car. An individual got out of the car, took photographs of the two Rhodes and Jamison Concrete trucks, returned to his car, and drove off.

Finally, there is no contention, and, indeed, no record evidence, that at any time material herein any employees or suppliers of Robert Wood ever entered onto the jobsite through the swinging gate at the southern front end of the project or via the alleyway between the Laurel Grove Hospital and the building project.

B. *Analysis*

The complaint alleges that, by its acts and conduct herein described, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act. That provision, in relevant part, states:

> [Sec. 8](b) It shall be an unfair labor practice for a labor organization or its agents—
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> * * * * *
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> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, material, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
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> * * * * *
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> (B) forcing or requiring any person . . . to cease doing business with any other person . . . .

The prohibitions of Section 8(b)(4) of the Act were designed to reach secondary boycotts by labor organizations and reflect "the dual congressional objective of preserving the right of labor organizations to bring pressure on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *N.L.R.B.* v. *Denver Building and Construction Trades Council [Gould & Peisner]*, 341 U.S. 675, 692 (1951). Especially in common situs situations, the line between lawful primary and unlawful secondary activity is not clearly defined, and in *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547 (1950), the Board adopted guidelines,[20] which have been approved by the courts,[21] to aid in determining whether the object of common situs picketing by a labor organization is primary or secondary. However, said guidelines are merely evidentiary in nature and are not to be mechanically applied. Thus, while compliance may give rise to a rebuttable presumption that picketing is primary, the totality of the evidence may establish an underlying secondary objective. *International Union of Operating Engineers, Local Union No. 450, AFL-CIO (Linbeck Construction Corporation)*, 219 NLRB 997, 998 (1975), affd. 550 F.2d 311 (5th Cir. 1977); *General Teamster, Warehouse and Dairy Employees Union Local No. 126, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, etc. (Ready Mixed Concrete, Inc.)*, 200 NLRB 253 (1972).

[19] I do not rely upon the testimony of Clarke as to what the individual, who was upon the running board, said to the Rhodes and Jamison Concrete driver. The truck was emitting a substantial amount of noise, and I do not believe Clarke could accurately hear what was said. However, I specifically credit the forthright testimony of the driver Norton.

[20] In order to be determined that such is lawful primary conduct, (1) common situs picketing must be strictly limited to times when the *situs* of the dispute is located on the secondary employer's premises; (2) at the time of the picketing the primary employer must be engaged in its normal business at the *situs*; (3) the picketing must be limited to places reasonably close to the location of the *situs*; and (4) the picketing must disclose clearly that the dispute is with the primary employer.

[21] The Court of Appeals for the Ninth Circuit has specifically approved of the *Moore Dry Dock* guidelines as the "proper test for determining the legality of union picketing at common situs construction projects." *International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, AFL-CIO [Robert McKee, Inc.]* v. *N.L.R.B.*, 598 F.2d 1154, 1156 (9th Cir. 1979); *Carpenters Local 470 [Mueller-Anderson, Inc.]* v. *N.L.R.B.*, 564 F.2d 1360 (9th Cir. 1977).

Further, in order to insulate neutral employers and their employees and suppliers from disputes not their own, employers on a common situs are permitted to establish and maintain separate gates for use by those primarily involved in a labor dispute and those not so involved. *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO* [*General Electric Company*] v. *N.L.R.B.*, 366 U.S. 667 (1961). When such gates are properly established, a union may picket only at the gate of the employer with whom it has a dispute; however, the integrity of the neutral gate must not be compromised by utilization by the primary employer's employees or suppliers—which conduct would destroy its immunity from picketing. *Local Union 323, International Brotherhood of Electrical Workers (J. F. Hoff Electric Co.)*, 241 NLRB 694 (1979); *Linbeck Construction Corporation, supra*. Moreover, the primary gate must not be placed so as to impair the effectiveness of picketing at that location, for the purpose of the separate primary gate is to "minimize [the impact of picketing] on neutral employers without substantial impairment of the effectiveness of the picketing in reaching the employees of the primary employer." *Nashville Building & Construction Trades Council, et al. (H.E. Collins Contracting Company, Inc.)*, 172 NLRB 1138, 1140 (1968), enfd. 425 F.2d 385 (6th Cir. 1970).

In support of the allegations of the consolidated complaint herein, counsel for the General Counsel argues that the alley or roadway entrance was clearly designated as Gate 2, the neutral gate; that Respondent's pickets admittedly did not confine themselves to the primary entrance, Gate 1, but rather picketed at the alleyway entrance whenever neutral subcontactors, their employees, and their suppliers entered onto the jobsite at that location; and that the aforementioned conclusively establishes that the object of the picketing was secondary. Contrary to the General Counsel and to counsel for the Charging Party, Respondent argues that, at all times material herein, its members lawfully picketed at the alleyway entrance inasmuch as the Gate 2 sign did not clearly identify who was supposed to utilize that entrance, as the Gate 2 sign was significantly removed from the actual entry area utilized by the neutral contractors, and as the actual entry area was not a properly established reserve gate. Finally, as to the events of July 22, counsel for Respondent argues that such were inconsequential and do not establish a violation of the Act.

Certain factors are susceptible of immediate resolution herein. At the outset, although their signs failed to identify Respondent, it is clear, and I conclude, that, commencing on February 27, Michael Britton and Gary Smith picketed on behalf of Respondent at the Laurel Grove Medical Plaza jobsite and that Respondent was, at all times, responsible for their conduct. Thus, both individuals are members of Respondent and received instructions from that labor organization regarding the manner in which the picketing was to be accomplished. Further, Respondent's organizer, Wedaman, visited the jobsite and spoke to Robert Wood's project manager Radom prior to the start of the picketing, and Wedaman was observed by Radom and Frank O'Dea in the area of the picketing on several occasions during April and May. Accordingly, I conclude that Respondent is responsible for the conduct of the picketing herein. Next, the record establishes, and it was uncontroverted, that Roger Radom established a valid reserved gate system at the jobsite on or about February 27; that, at the very least, a clearly defined entrance was set aside for the exclusive use of Robert Wood, its employees, and its suppliers and another primary employer; that there exists no record evidence that employees of Robert Wood or its suppliers utilized any other location for entrance onto the jobsite after February 27; and that Respondent was given notice of the establishment of the reserved gates. In this regard, I reject Respondent's initial defense that the neutral gate (Gate 2) sign was deficient inasmuch as it failed to identify which contractors were supposed to enter at that location. While Respondent is correct that said sign does not identify the users of the designated entrance, the Board has previously concluded that picketing at common situs entrances, set off by identically worded signs, is violative of Section 8(b)(4)(i) and (ii)(B). *Construction and General Laborers Union, Local 185, Laborers International Union of North America, AFL-CIO; Cement Masons Local 582, Operative Plasterer and Cement Masons International Association, AFL-CIO (West-Cal Construction, Inc.)*, 255 NLRB 53 (1981); *National Association of Broadcast Employees and Technicians, AFL-CIO, Local 31 (CBS, Inc.)*, 237 NLRB 1370 (1978). Finally, the consolidated complaint alleges that unlawful picketing occurred on specific dates. The record reveals, and Respondent's witnesses admitted, that picketing occurred at the alley or roadway entrance whenever subcontractors or their suppliers utilized that area as a means of access to the jobsite. Specifically, the record establishes that unlawful picketing occurred on April 1 and 2 (when employees of McLean Steel were on the jobsite and a large steel delivery was made to McLean Steel via the alleyway);[22] on April 6 through April 10 (during which week picketing occurred at the entrance to the alleyway on each day, and the McLean Steel employees honored the picketing the first 2 days of the week but refused to do so the remaining 3 days, entering the jobsite via the alleyway and working);[23] on May 18 (when employees of U.S. Eleva-

[22] While there was picketing at the alleyway entrance on April 3 when McLean Steel employees arrived at the jobsite and crossed onto the project at the alleyway entrance, such occurred early that morning. Inasmuch as the reserved gate signs had been removed the previous afternoon and were not reestablished until after the picketing commenced on April 3, I place no reliance on that picketing for any possible violations of the Act.

[23] I credit the uncontroverted testimony of Radom and O'Dea as to the events of April 6 through April 10. However, while Radom testified that Respondent's picketing continued at the alleyway entrance on April 13 through April 17, employees of McLean Steel did not report to the jobsite for work that week and there is no record evidence that any other subcontractors were on the project during that week. Radom also testified that substantial work remained for McLean Steel to complete but admitted that the subcontractor controlled its own labor relations, including the scheduling of work. Radom further testified that he had serveral conversations with McLean Steel management officials about working that week and was told that no employees would work until the sheetmetal workers union picketing ended. Assuming *arguendo* that this alleged reply implicated Respondent's picketing as the reason why the McLean Steel employees did not report for work on April 13 through April 17, I note the hearsay nature of the response and that no corroborating testi-

Continued

tor and Supply entered onto the project via the alleyway and picketing by Respondent ensued immediately thereafter at the alleyway);[24] and on May 20 (on which date Respondent's pickets, organizer Wedaman, and other unidentified individuals attempted to induce drivers, who were employed by Rhodes and Jamison, to forgo making a cement delivery to Jerry R. Clarke Construction through the alleyway.[25]

If one concludes that counsel for the General Counsel's arguments, that the Gate 2 sign, which was affixed to a section of the swinging gate near the southern border of the jobsite and located no less than 15 feet from the alley or roadway, between the Laurel Grove Hospital and the building project, at most referred to said alley as the designated neutrals' entrance onto the jobsite or, at the least, referred to the entire southern fence area, including the alleyway *and* the swinging gate, herein are meritorious, there is—and can be—no question that Respondent's aforementioned picketing had, as an object, the exerting of pressure on Robert Wood by enmeshing neutral subcontractors on the project in a dispute not their own. Thus, there is no evidence that employees or suppliers of Robert Wood ever utilized the neutral entrance for access onto the jobsite; rather, the admissions of pickets Britton and Smith, that they were instructed to picket at the alleyway entrance whenever there was "business" at that location, suggest that Respondent was well aware of this fact and designed its above-described picketing at the alleyway to reach the employees of the neutral subcontractors and their suppliers. In a recent case, the Board characterized similar picketing as follows: "Thus, Respondent made no effort to limit its appeal to the primary employer even after its agents knew that there was a gate reserved for use by the primary. The inference is justifiable that Respondent did this in order to cause [pressure upon the primary by the neutral employers]." *General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL-CIO (Andy Frain, Inc.)*, 239 NLRB 295, 307 (1978). That the identical inference is permissible—and, indeed, warranted—herein is clear from the uncontroverted and credited testimony of Frank O'Dea that one of Respondent's pickets approached him on May 21 as he installed the southern boundary swinging gate across the alleyway and said "that we had already violated the gate and this job would be shut down pretty soon. I'd be out of work . . . no other union company would enter the gate."[26] Clearly, then, accepting the contentions of the General Counsel, Respondent's picketing was unlawfully motivated and violative of Section 8(b)(4)(i) and (ii)(B) of the Act. *Local 32B-32J, Service Employees International Union, AFL-CIO (New York Association for the Blind), supra; International Brotherhood of Electrical Workers, Local Union No. 211 (Atlantic County Improvement Authority)*, 248 NLRB 168, fn. 2 (1980).

Moreover, even if I conclude, as urged by counsel for Respondent, that the Gate 2 sign referred solely to the swinging gate to which it was affixed as the designated neutral subcontractors' entrance; that the alleyway, across which was stretched a section of loose fencing, constituted an undefined, third entrance onto the project through which employees and suppliers of any entity, including Robert Wood, could conceivably enter the jobsite; and that the foregoing resulted in confusion as to which entrance was the one reserved for neutral subcontractors, I likewise must further conclude that Respondent's picketing herein was nonetheless violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Thus, counsel's arguments are fallacious in two significant aspects. Initially, I note his apparent misconception that the lack of precise definition of the alleyway as an entrance, solely reserved for employees and suppliers of neutral subcontractors, somehow vitiates the entire reserved gate system at the jobsite and privileges picketing at that area. Second, his arguments completely ignore the critical fact that not only was the primary gate clearly defined but also that there was *no* contamination of any neutral access area by the primary's employees or suppliers. That Respondent's legal theory is without merit is clear from two recent decisions of the Board. In *CBS Inc., supra*, unions were engaged in a labor dispute with a national television network, which was covering a news event at a Washington, D.C., hotel. The hotel's employees were represented by another labor organization and, in order to localize the dispute, a separate entrance was reserved for the network's employees and other entrances were posted as reserved for the hotel's employees. However, there was another hotel entrance at which no gate designation was posted and, consequently, at which picketing occurred. The Board concluded that this picketing was violative of Section 8(b)(4)(i) and (ii)(B) of the Act, stating: ". . . that the picketing in front of the hotel's [unposted entrance] was . . . impermissible, although no sign was put up in that area, in view of the fact that the [unions involved] were aware of a functioning 'reserved gate' for [the network's] personnel and the absence of any evidence that [the network's] employees used the [unposted] entrance." 237 NLRB at

mony was adduced. Accordingly, I place no reliance upon, or give any weight to, such self-serving hearsay testimony, and draw no inference as to the motivation underlying the failure of the McLean Steel employees to report for work that week. *Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company)*, 248 NLRB 802, fn. 2 (1980). Therefore, picketing that week will not be found unlawful.

[24] I credit the uncontroverted testimony of Frank O'Dea regarding this incident; however, noting the hearsay testimony concerning the reason while the U.S. Elevator and Supply personnel departed without working, I do not credit O'Dea as to why said individuals left. *Gulf Coast Construction, supra.*

[25] The testimony of both Radom and O'Dea along with the photographic evidence clearly establish that said incident occurred. However, while I also credit Radom that Respondent's pickets may have been at the alleyway on May 21, I do not believe such can establish a potential violation. Thus, I place no reliance upon the hearsay uncorroborated rationale allegedly given to Radom by Jerry R. Clarke Construction management for its employees' failure to report for work that day. *Gulf Coast Construction, supra.* Thus, there is no credible evidence that any subcontractors were on the project that day to be affected by the picketing or that employees refused to work due to said conduct.

[26] Statements of pickets may be utilized to ascertain the true motivation for a labor organization's picketing. *Local 32B-32J, Service Employees International Union, AFL-CIO (New York Association for the Blind)*, 250 NLRB 240, 248 (1980); *Local Union No. 3, International Brotherhood Electrical Workers, AFL-CIO (Bisantz Electric Co., Inc.)*, 192 NLRB 283, 287 (1971); *Plumbers & Steamfitters Local Union No. 178 (Springday Company, Division of Dayco Corporation)*, 185 NLRB 725 (1970).

1377-79. The operative factors therein are identical to those herein involved. Thus, notwithstanding the lack of clear designation of the alleyway as an entrance reserved solely for neutral subcontractors, Radom's telegrams, dated February 27 and April 3, establish that Respondent was well aware of the well-defined and functioning reserved gate for Robert Wood's use, and there is no evidence—and Respondent does not contend—that Robert Wood's employees or suppliers ever utilized any entrance but its own for access to the jobsite. Likewise, in *International Brotherhood of Electrical Workers, Local 332, AFL-CIO (Lockheed Missiles and Space Company, Inc.)*, 241 NLRB 674 (1979), the Board concluded that a union's picketing was designed to reach all employees *but* the primary and was, thus, violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Therein, the union, which represented the neutral plant owner's employees, had a labor dispute with a subcontractor. In order to localize picketing to the dispute with the subcontractor, a clearly designated entrance was reserved for that employer; however, *no* other entrances to the plant were posted. Notwithstanding that the subcontractor's employees only entered through the reserved entrance, the union picketed at other entrances which were used by plant employees and suppliers. Noting that the plant owner failed to post signs at any other entrance, the Board nonetheless concluded that "the lack of those signs did not invalidate the reserved gate." *Id.* at 680. In so ruling, the Board emphasized that the work area was essentially enclosed and that the reserved gate could be effective without additional signs. Herein, of course, the jobsite was also fully enclosed, and there has been no showing that picketing at the primary gate could not have been effective. See *Local No. 222, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (W.S. Hatch Co., Inc.)*, 152 NLRB 853 (1965).[27]

Based upon the foregoing and the record as a whole, there can be no doubt herein that Respondent's picketing at the alleyway entrance on April 1 and 2 and 6–10 and May 18 and 20 was unlawfully motivated, having as its object the advertising of its labor dispute with Robert Wood to employees of all neutral subcontractors and their suppliers with the expectation that said individuals would honor the picketing and not work. That this must be the case is clear from the explicit instructions given by Respondent to its pickets—that they were to picket at the alleyway entrance whenever there was "business" at that location. The inferences are warranted that "business" translates to "use by subcontractors" and that the object of such was to force or require the neutral and unoffending subcontractors to cease doing business with Robert Wood. Recently, the Board stated, "*Moore Dry Dock* would be virtually nullified if unions were free to picket any part of a jobsite other than the one gate reserved for the primary employer. *Moore Dry Dock* must be construed in the light of [Respondent's] overall obligation to conduct its activities with the minimum possible effect on the secondaries." *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Charles Featherly Construction Co.)*, 252 NLRB 452, 463 (1980). The rationale applies equally to the instant case, and I find that by picketing on the specific dates mentioned above at the alleyway entrance, Respondent engaged in acts and conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.[28]

THE REMEDY

Having found that Respondent engaged in unfair labor practices violative of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom. Arguing that Respondent's conduct herein demonstrates a proclivity to violate the secondary boycott provisions of the Act, counsel for the General Counsel contends that the appropriate remedy herein should include the broadest possible such language.[29] Buttressing her argument, counsel points to a Decision and Order in Cases 32-CC-375, 32-CC-376, and 32-CC-389, issued by the Board on July 6, 1981, and involving the same Respondent Union and similar issues as involved in these cases. Counsel for the General Counsel

[27] In support of its argument that a union is privileged to picket the entire common situs in essence of a properly maintained reserve gate, Respondent points to *Local 453, International Brotherhood of Electrical Workers, AFL-CIO (Southern Sun Electric Corp.)*, 237 NLRB 829 (1978), enfd. 620 F.2d 170 (8th Cir. 1980). While technically accurate, Respondent's contention is grossly leading. Thus, *Southern Sun* concerns an improperly maintained *primary gate*, which was placed at a location barely, if at all, visible to the general public. Accordingly, adhering to traditional concepts, the Board concluded that the placement of the primary gate unjustly impaired the effectiveness of the union's lawful picketing to convey its message to the primary's employees and suppliers and to the general public. *Id.* at 830. This is *not* the situation involved herein; there is no contention that picketing at the primary gate would, in any way, be ineffective in transmitting Respondent's message to the general public or to Robert Wood's employees or suppliers.

[28] Inasmuch as I do not credit the hearsay testimony of O'Dea regarding the alleged rationale given by U.S. Elevator and supply personnel for departing from the jobsite on May 18, I find that the picketing that day represented an unlawful inducement within the meaning of Sec. 8(b)(4)(i)(B) of the Act. Cf. *N.L.R.B. v. Local 3, International Brotherhood of Electrical Workers [New York Telephone Co.]*, 325 F.2d 561 (2d Cir. 1963). Likewise, although unsuccessful, the May 20 acts and conduct (including picketing, informing the Rhodes and Jamison Concrete drivers that the picketing was sanctioned, threatening said drivers with "trouble" if deliveries were made, and writing down license numbers) of Respondent's pickets and other individuals, with organizer Wedaman present, also constitutes unlawful inducement within the meaning of Sec. 8(b)(4)(i)(B). *Los Angeles Building and Construction Trades Council, AFL-CIO (Sierra South Development, Inc.)*, 215 NLRB 288, 290 (1974). Finally, as with the May 20 conduct, I believe that Respondent's pickets also attempted to unlawfully induce Brian Norton, a Rhodes and Jamison Concrete driver, to not complete a ready-mix concrete delivery on July 22. Thus, I credit Jerry Clarke to the extent that he observed a picket jump onto the running board of Norton's truck on that date and speak to Norton. I further credit Norton as to what was said. While Norton did not see this individual speak, it would be utterly naive to conclude that anyone but the picket was the speaker. As to the substance of the picket's comments, such clearly constitutes an unlawful inducement to an employee of a neutral not to cross a picket line. *Sierra South, supra.* Accordingly, such was violative of Sec. 8(b)(4)(i)(B) of the Act. Clearly, on both May 20 and July 22, Respondent hoped to put pressure upon the Rhodes and Jamison Concrete drivers not to deliver their ready-mix to Jerry R. Clarke Construction with the hope and expectation that the latter would, in turn, cease doing business with Robert Wood.

[29] In her post-hearing brief, counsel for the General Counsel argues that the cease-and-desist language herein should, rather than being specific to the facts, set forth as the object, "an object thereof is to force or require any person to cease doing business with any other person engaged in an industry affecting commerce."

further argues that while the aforementioned was based upon a formal settlement stipulation, the latter did *not* contain a nonadmissions clause. Counsel for Respondent argues that no such broad cease-and-desist language is required herein inasmuch as the prior Decision and Order does not demonstrate a proclivity to violate the Act, but rather, at most, establishes merely an earlier violation of the Act. Counsel further argues that the instant conduct is not sufficiently egregious to warrant any broad relief.

At the outset, the Board has long held that a broad remedial order is appropriate whenever a proclivity to violate the Act is established, either by compelling circumstances in a particular case or by prior Board decisions, which involve the same respondent and similar conduct as the case at bar. *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (H. A. Carney and David Thompson, Partners, d/b/a C & T Trucking Co.)*, 191 NLRB 11 (1971); *Teamsters, Chauffeurs, Warehousemen and Helpers, Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Victory Transportation Service, Inc.)*, 180 NLRB 709 (1970). With regard to the latter, the Board's normal position is that prior settlement agreements, either formal or informal, may not be utilized as showing a proclivity to violate the Act. However, "formal settlement agreements which do not contain a non-admissions clause may be relied on to [establish] a proclivity to violate the Act." *Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.)*, 257 NLRB 295, fn. 1 (1981); *Sequoia District Council of Carpenters, AFL-CIO (Nick Lattanzio d/b/a Lattanzio Enterprises)*, 206 NLRB 67 (1973). For several reasons, I find merit to counsel for the General Counsel's request that a broad cease-and-desist order be issued against Respondent herein.

Underlying the July 6 Decision and Order of the Board was a formal settlement stipulation which, in turn, was based upon no less than three separate cases and complaints, filed against Respondent. Two factors emerge. First, as far as can be determined from the complaints in Cases 32-CC-375, 32-CC-376, and, 32-CC-389, respectively, these involve picketing at three different jobsites, two separate primary employers, and the identical conduct as herein involved (picketing at clearly defined entrances, reserved for neutrals). Second, there is no nonadmissions clause in the formal settlement stipulation. In this regard, paragraph 9 of the latter (G.C. Exh. 3(b)), in part, reads as follows:

> This stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to it, except that for the sole purpose of determining the appropriate breadth of any order to be entered against Respondent in any future unfair labor practice proceeding, this Stipulation may be considered as though it were an adjudicated determination of the Board . . . . With the exception of the foregoing sentence, Respondent, by entering into this Stipulation, does not admit the commission of any unfair labor practice and does not waive any defenses of law or fact concerning this matter which Respondent may seek to assert in any proceeding not involving the Board . . . .

This language is similar to that contained in the formal settlement stipulation which was considered by the Board in *Lattanzio Enterprises, supra*. Therein, not only was said language construed as not constituting a disclaimer of liability but such also was construed as permitting the General Counsel to rely upon it as establishing a proclivity to violate the Act in a similar manner. *Id.* at 70.

However, I do not base my conclusion solely upon prior events. Rather, I also rely upon the nature of Respondent's conduct herein which cannot be condoned. Thus, the instant conduct did not occur by mistake, nor is such legally in unchartered waters. Rather, in blatant disregard of a clearly marked, scrupulously maintained, and clearly visible primary entrance, Respondent quite deliberately picketed at an entrance or area which was solely utilized by neutral subcontractors and their suppliers for access onto the jobsite. In these circumstances, only a broad order is sufficient to remedy what seemingly is Respondent's propensity to ignore the *Moore Dry Dock* prohibitions when engaged common situs picketing. *Featherly Construction, supra.*

CONCLUSIONS OF LAW

1. Robert Wood, McLean Steel, U.S. Glass & Mirror, and Comfort Masters are employers and/or persons engaged in commerce or industries affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By picketing at the alleyway entrance onto the Laurel Grove Medical Plaza jobsite, which entrance area was solely utilized by neutral subcontractors, including McLean Steel and U.S. Elevator and Supply on April 1, 2, and April 6 through April 10, and May 18, with an object of forcing or requiring said subcontractors to cease doing business with Robert Wood, Respondent engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act, which violations are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. By conduct, including appeals to drivers, picketing, threats, and the writing down of license numbers, at the alleyway entrance onto the Laurel Grove Medical Plaza jobsite on May 20 and on July 22, Respondent attempted to induce employees of Rhodes and Jamison Concrete not to deliver concrete to the jobsite, with an object of forcing or requiring Rhodes and Jamison Concrete to cease doing business with Jerry R. Clarke Construction in order to force Jerry R. Clarke Construction to cease doing business with Robert Wood, in violation of Section 8(b)(4)(i)(B) of the Act, which violation is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[30]

The Respondent, Carpenters Union Local No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Haywood, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) By picketing at the entrance which is solely utilized by neutral subcontractors, their employees, and their suppliers at the Laurel Grove Medical Plaza jobsite or at any similar entrance onto any common situs jobsite within its territorial jurisdiction, inducing or encouraging individuals employed by McLean Steel, U.S. Elevator and Supply, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal, in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to refuse to perform any other services; or threatening, coercing, or restraining McLean Steel or any other person engaged in commerce where, in either case, an object thereof is to force or require McLean Steel, U.S. Elevator and Supply, or any other person to cease doing business with Robert Wood or any other person engaged in commerce or in an industry affecting commerce.[31]

(b) By conduct, including appeals, picketing, threats, and writing down license numbers, at the entrance which is solely utilized by the employees and suppliers of neutral subcontractors at the Laurel Grove Medical Plaza jobsite or at any similar entrance onto any common situs within its territorial jurisdiction, inducing or encouraging individuals employed by Rhodes and Jamison Concrete or any other person engaged in commerce or in an industry affecting; commerce, to engage in a strike or refusal, in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, or commodities or to refuse to perform any other services, where an object thereof is to force or require Rhodes and Jamison Concrete or any other person to cease doing business with Jerry R. Clarke Construction or any other person in order to force or require Jerry R. Clarke Construction or any other person to cease doing business with Robert Wood or any other person engaged in commerce or in an industry affecting commerce.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its business office and meeting hall copies of the attached notice marked "Appendix."[32] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notice is not altered, defaced, or covered by any other material.

(b) Promptly after receipt of copies of said notice from said Regional Director, return the signed copy for posting by McLean Steel, U.S. Elevator and Supply, Rhodes and Jamison Concrete, Jerry R. Clarke Construction, and Robert Wood, those companies willing, at all places where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[30] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[31] I note that this language is similar to, and accomplishes the same purpose as, that language proposed by counsel for the General Counsel. Moreover, as I believe an order must be specific to whatever case it involves, the instant language is more efficacious.

[32] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing during which all parties were afforded the opportunity to present evidence, it has been determined that this labor organization has engaged in conduct violative of the National Labor Relations Act. Accordingly, we undertake the following:

WE WILL NOT, by picketing or in any manner proscribed by Section 8(b)(4)(i) and (ii) (B) of the National Labor Relations Act:

1. Induce or encourage any employee of McLean Steel, U.S. Elevator and Supply, or of any other person engaged in commerce or in an industry affecting commerce to refuse, in the course of his or her employment to work or perform services, or
2. Threaten, coerce, or restrain McLean Steel, or any other person engaged in commerce or in an industry affecting commerce to refuse, in the course of his or her employment, to work or perform services

where, in either case, an object thereof is to force or require McLean Steel, U.S. Elevator and Supply, or any other person to cease doing business with Robert Wood & Associates, Inc., or any other person engaged in commerce or in an industry affecting commerce.

WE WILL NOT, by appeals, picketing, taking down license numbers, or similar conduct proscribed by Section 8(b)(4)(i)(B) of the National Labor Relations Act, induce or encourage any employee of Rhodes and Jamison Concrete or of any other person engaged in commerce or in an industry affecting commerce to refuse, in the course of his or her employment, to work, transport, or perform services where an object thereof is to force or require Rhodes and Jamison Concrete or any other person to cease doing business with Jerry R. Clarke Construction or any other person in order to force or require Jerry R. Clarke Construction, or any other person to cease doing business with Robert Wood & Associates, Inc., or any other person engaged in commerce or in an industry affecting commerce.

CARPENTERS UNION LOCAL NO. 1622, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO